

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PROSOMNUS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND
FINAL ORDERS AUTHORIZING PAYMENT OF
PREPETITION TAXES AND FEES**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move (the “**Motion**”) for entry of an interim order (“**Interim Order**”) and a final order (“**Final Order**”), pursuant to sections 105(a), 363(b), 506(a), 507(a)(8), and 541 of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rule 6003 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing payment of prepetition taxes and fees owing to certain federal, state, provincial, and local U.S. governmental units, as well as regulatory fees and taxes associated with foreign jurisdictions. In support of the Motion, the Debtors rely upon the *Declaration of Brian Dow, Chief Financial Officer of Debtors, in Support of Chapter 11 Petitions and First Day Pleadings*, filed contemporaneously herewith (the “**First Day Declaration**”).² In further support of the Motion, the Debtors, by and through their undersigned counsel, respectfully represent:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: ProSomnus, Inc. (8216), ProSomnus Holdings, Inc. (3855), and ProSomnus Sleep Technologies, Inc. (0766). The location of the Debtors’ principal place of business and the Debtors’ mailing address is 5675 Gibraltar Dr., Pleasanton, California 94588.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.



JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). In accordance with Local Rule 9013-1(f), the Debtors consent to entry of a final order if it is determined that the Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 363, 506, 507, and 541 and Bankruptcy Rule 6003.

BACKGROUND

3. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

4. The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

RELIEF REQUESTED

5. By this Motion, the Debtors request entry of the Interim Order and the Final Order, substantially in the forms of Exhibit A and Exhibit B, respectively, attached hereto, authorizing them to pay any prepetition tax and fee obligations including, without limitation, income and franchise taxes, property taxes, sales and use taxes, value added taxes, business license fees, annual

report taxes, regulatory assessments, and other taxes and fees (collectively, the “**Taxes and Fees**”). The Debtors remit the Taxes and Fees, either directly or indirectly through their third-party tax aggregator, Avalara, Inc. (“**Avalara**”), to various federal, state and local authorities (collectively, the “**Taxing Authorities**”) when due in the ordinary course of business.³ The Debtors believe they are substantially current with their respective Taxes and Fees as of the Petition Date. Moreover, while a *de minimis* prepetition amount may be due and owing to Avalara, nonpayment of such amount and ordinary course postpetition amounts could result in Avalara discontinuing its tax aggregation services with the Debtors, potentially exposing the Debtors to tax liabilities in all states where Avalara serves as the Debtors’ trusted tax intermediary.

6. Prior to the Petition Date, the Debtors paid \$56,000 on account of 2023 business property taxes to Alameda County, CA. Accordingly, the Debtors do not believe any amounts are currently due and owing on account of business property taxes and anticipate approximately \$3,500 in Taxes and Fees will be due within the next 30 days, which amount is largely comprised of sales and use taxes remitted through Avalara.

7. For the avoidance of doubt, the requested authorization (i) would be discretionary, allowing the Debtors, among other things, to elect to pay Taxes and Fees as to which their officers and directors may have personal liability in the event of nonpayment by the Debtors, before other Taxes and Fees, (ii) would be without prejudice to the Debtors’ rights to contest the amounts of any Taxes and Fees on any grounds they deem appropriate, and (iii) would extend to the payment of Taxes and Fees relating to tax audits that have been completed, are in progress, or arise from prepetition periods.

³ A non-exclusive list of the Taxing Authorities is attached hereto as Exhibit C (the “**Taxing Authorities List**”). Although the Taxing Authorities List is substantially complete, the relief requested herein is to be applicable with respect to all Taxing Authorities and is not limited to those taxing Authorities listed on the Taxing Authorities List.

8. In addition, the Debtors request that the Court authorize the Debtors' banks to receive, process, honor, and pay all prepetition and postpetition checks and fund transfers on account of the Taxes and Fees that had not been honored and paid as of the Petition Date, and authorize the Debtors' banks and financial institutions to rely on the representations of the Debtors as to which checks and fund transfers should be honored and paid in respect of Taxes and Fees, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

9. As set forth below, the Taxes and Fees at issue are appropriate for payment to the extent that they are priority or secured claims that are payable in full or, alternatively, under the personal liability theory or the doctrine of necessity. By paying the Taxes and Fees in the ordinary course of business, as and when due, the Debtors will avoid unnecessary disputes with the Taxing Authorities—and expenditures of time and money resulting from such disputes—over myriad issues that are typically raised by such units as they attempt to enforce their rights to collect Taxes and Fees.

BASIS FOR RELIEF

10. Prior to the Petition Date, the Debtors incurred obligations to the Taxing Authorities. Although, as of the Petition Date, the Debtors were substantially current in the payment of assessed and undisputed Taxes and Fees, certain Taxes and Fees attributable to the prepetition period may not yet have become due. Certain prepetition Taxes and Fees may not be due until the applicable monthly, quarterly, or annual payment dates—in some cases immediately and in others not until next year. In 2023, the Debtors paid approximately \$37,000 on account of the Taxes and Fees, exclusive of any amounts paid on account of property tax.

11. The continued payment of the Taxes and Fees on their normal due dates will ultimately preserve the resources of the Debtors' estates, thereby promoting their prospects for a successful chapter 11 process. If such obligations are not timely paid, the Debtors will be required

to expend time and incur attorneys' fees and other costs to resolve a multitude of issues related to such obligations, each turning on the particular terms of each Taxing Authority's applicable laws, including whether (i) the obligations are priority, secured, or unsecured in nature, (ii) the obligations are proratable or fully prepetition or postpetition, and (iii) penalties, interest, attorneys' fees and costs can continue to accrue on a postpetition basis and, if so, whether such penalties, interest, attorneys' fees, and costs are priority, secured, or unsecured in nature.

12. Moreover, certain of the Taxes and Fees may be considered to be obligations as to which the Debtors' officers and directors may be held directly or personally liable in the event of nonpayment. In such events, collection efforts by the Taxing Authorities would provide obvious distractions to the Debtors and their officers and directors in their efforts to bring the Chapter 11 Cases to an expeditious conclusion.

13. Certain of the Taxing Authorities may not have been paid or may have been sent checks and/or fund transfers for Taxes and Fees that may or may not have been presented or cleared as of the Petition Date. Similarly, in other cases, Taxes and Fees have accrued or are accruing, or are subject to audit or review, but have not yet become due and payable and, thus, any checks or fund transfers will be issued on a postpetition basis. Accordingly, the Debtors seek entry of an order authorizing and directing their banks and other financial institutions to receive, process, honor, and pay all prepetition and postpetition checks and fund transfers issued by the Debtors to the Taxing Authorities in payment of Taxes and Fees that had not been honored and paid as of the Petition Date, and authorizing the Debtors' banks and financial institutions to rely on the representations of the Debtors as to which checks and fund transfers should be honored and paid in respect of Taxes and Fees, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

14. Lastly, certain regulatory fees are incurred in the ordinary course of the Debtors' business and, out of an abundance of caution, the Debtors seek authorization to pay those as and when they come due.

APPLICABLE AUTHORITY

15. To the extent that the Taxes and Fees are priority claims pursuant to Bankruptcy Code section 507(a)(8), or secured claims pursuant to Bankruptcy Code section 506(a), their payment should be authorized on the basis that (i) they are required to be paid in full as a condition to satisfying the plan confirmation requirements contained in Bankruptcy Code section 1129, or (ii) they would be entitled to payment before any prepetition non-priority unsecured claim.

16. If the Taxes and Fees are deemed priority claims, Bankruptcy Code section 1129(a)(9)(C) requires that they be paid no less favorably than through regular installment payments, over a period not exceeding five (5) years after the Petition Date, of a total value as of the effective date of the plan equal to the allowed amount of each such claim. *See* 11 U.S.C. § 1129(a)(9)(C).

17. If the Taxes and Fees are deemed secured claims that would (but for such secured status) fall under the rubric of Bankruptcy Code section 507(a)(8), Bankruptcy Code section 1129(a)(9)(D) requires that they be paid no less favorably than through regular installment payments, over a period not exceeding five (5) years after the Petition Date, of a total value as of the effective date of the plan equal to the allowed amount of each such claim. *See* 11 U.S.C. § 1129(a)(9)(D) (referring back to 11 U.S.C. § 1129(a)(9)(C)). Otherwise, Bankruptcy Code section 1129(b)(2)(A) requires that they be satisfied through deferred cash payments totaling at least the allowed amount of each such claim, of a value, as of the effective date of the plan, equal to the value of the collateral securing the claim, with a continuation of the liens against the collateral; or if the collateral is to be sold, that the lien securing the claim attach to the proceeds of

sale; or that the holder realize the indubitable equivalent of the claim. *See* 11 U.S.C. § 1129(b)(2)(A); *see also Federal Home Loan Mortgage Corp. v. Bugg (In re Bugg)*, 172 B.R. 781, 785 (E.D. Pa. 1994) (“The ‘fair and equitable’ standard requires that a secured claim holder retain its lien and receive deferred cash payments totalling [*sic*] at least the allowed amount of the claimant’s secured claim and a present value equal to the value of its collateral.”).

18. Because of the likelihood that the vast majority of the Taxes and Fees constitute either priority claims under Bankruptcy Code section 507(a)(8) or secured claims under Bankruptcy Code section 506(a), the Debtors’ payment of the Taxes and Fees now, in all likelihood, will affect only the timing of the payments and not the amounts to be received by the Taxing Authorities. Moreover, by paying legitimate tax claims now, the Debtors will avoid any unnecessary fees, interest, or penalties that might otherwise be asserted. Other creditors and parties in interest, therefore, will not be prejudiced if the relief sought herein is granted by this Court.

19. Alternatively, authorization to pay the Taxes and Fees is appropriate under the “doctrine of necessity,” which is grounded in Bankruptcy Code section 105(a). Section 105(a) provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of this section is to grant bankruptcy courts the authority to take actions necessary to exercise their power under the Bankruptcy Code.

20. The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization. *See In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit

payment and thereafter approving payment of key inventory suppliers' prepetition claims when such suppliers could destroy debtor's business by refusing to deliver new inventory on eve of debtor's key sales season);⁴ *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (reiterating court's own statement in a prior ruling that "[i]n the Third Circuit the law is clear that to justify payment of one class of pre-petition creditors in advance of a confirmed plan, the debtor must show that payment is essential to the continued operation of the business"); *In re Sharon Steel Corp.*, 159 B.R. 730, 736 (Bankr. W.D. Pa. 1993) ("The Third Circuit has adopted the 'necessity of payment' doctrine."); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) ("[T]he court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.").

21. This Court may also authorize the Debtors to pay Taxes and Fees under Bankruptcy Code section 363(b), which provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Courts have indicated that the use of property of the estate outside of the ordinary course of business is proper where the debtor in possession has articulated "some business justification, other than the mere appeasement of major creditors." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); *see also Institutional Creditors of Cont'l Airlines, Inc. v. Cont'l Airlines, Inc. (In re Cont'l Airlines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (holding that

⁴ The Court's power to utilize the doctrine of necessity in chapter 11 cases derives from the Court's inherent equity powers and its statutory authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The United States Supreme Court first articulated the doctrine of necessity over a century ago, in *Miltenberger v. Logansport Ry. Co.*, 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. *See id.* at 309-14. The modern application of the doctrine of necessity is largely unchanged from the Court's reasoning in *Miltenberger*. *See In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581-82 (3d Cir. 1981) ("[I]n order to justify payment under the 'necessity of payment' rule, a real and immediate threat must exist that failure to pay will place the continued operation of the [debtor] in serious jeopardy.").

Bankruptcy Code section 363(b) requires that “there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business”); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983) (“[A] judge determining a § 363(b) application [must] expressly find . . . a good business reason to grant such an application.”); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate under [Section 363], courts require the debtor to show that a sound business purposes justified such actions.”).

22. The relief requested herein easily satisfies the foregoing standards. Failure to pay the Taxes and Fees to the Taxing Authorities in full and on time, thereby risking the cessation of normal relations between the Taxing Authorities and the Debtors, will make these estates worse off than they will be having paid the Taxes and Fees. It is in the best interests of the Debtors’ estates that the Taxes and Fees be paid on time so as to avoid administrative difficulties. Failure to timely pay, or a precautionary withholding by the Debtors of payment of, the Taxes and Fees may cause the Taxing Authorities to take precipitous action, including an increase in audits, a flurry of lien filings, and significant administrative maneuvering at the expense of the Debtors’ time and resources. Prompt and regular payment of the Taxes and Fees will avoid this unnecessary governmental action.

23. Certain of the Taxes and Fees may constitute so-called “trust fund” taxes, which are required to be collected from third parties and held in trust for payment to the Governmental Units. Such taxes are not considered property of the estate under Bankruptcy Code section 541(d). *See Begier v. IRS*, 496 U.S. 53, 63-67 (1990) (trust fund taxes are not property of estate); *see also*

City of Farrell v. Sharon Steel Corp., 41 F.3d 92, 96 (3d Cir. 1994) (withheld taxes were subject to a trust); *Official Comm. Of Unsecured Creditors of the Columbia Gas Transmission Corp. v. Columbia Gas. Sys. Inc. (In re Columbia Gas Sys. Inc.)*, 997 F.2d 1039, 1061-62 (3d Cir. 1993) (refunds required to be collected by federal law created trust fund that was not property of the debtor's estate); *Shank v. Wash. State Dep't of Revenue, Excise Tax Div. (In re Shank)*, 792 F.2d 829, 830 (9th Cir. 1986) (sales tax required by state law to be collected by sellers from their customers is "trust fund" tax); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 433-34 (2d Cir. 1985) (same); *In re Al Copeland Enters., Inc.*, 133 B.R. 837, 841-42 (Bankr. W.D. Tex. 1991) (debtor obligated to pay Texas sales taxes plus interest because such taxes were "trust fund" taxes), *aff'd*, 991 F.2d 233 (5th Cir. 1993). The Debtors, therefore, arguably have no equitable interest in the Taxes and Fees that are trust fund taxes and are obligated to pay over the collected amounts.

24. Additionally, under the laws of many states and provinces, officers and directors may be held directly or personally liable for the nonpayment of certain types of taxes. It is in the best interests of the Debtors' estates, and consistent with the reorganization policy of the Bankruptcy Code, to eliminate the possibility that their officers and directors will become subject to time-consuming and potentially damaging distractions.

25. The Chapter 11 Cases are complicated due to the nature of the Debtors' business, and the Debtors' focus should be on addressing their operational and financial issues in a manner that will maximize recoveries. In this context, the payment of the Taxes and Fees is insignificant and will have no meaningful effect on the recoveries of creditors in the Chapter 11 Cases, particularly in view of the priority or secured status of a significant portion of such obligations. Moreover, the payment amount will likely be offset in no small part by the amount of postpetition resources that the Debtors will conserve by obviating the need to spend time and money to address

disputes with the Taxing Authorities that are unnecessary and wasteful of the resources of the Debtors and this Court.

26. As set forth above, the Debtors also request that their banks and financial institutions be authorized and directed to honor and process payments on account of the Taxes and Fees as directed by the Debtors. The Debtors have sufficient liquidity to pay the amounts delineated in this Motion in the ordinary course of business and have implemented controls to ensure that prepetition claims will not be paid except as authorized by the Court. The Debtors therefore submit that the payment-processing procedures described above are appropriate.

27. The relief requested in this Motion is similar to relief granted by numerous courts, including this court in other chapter 11 cases in this district. *See, e.g., In re Number Holdings, Inc.*, Case No. 24-10719 (JKS) (Bankr. D. Del. Apr. 10, 2024) [Docket No. 122] (granting interim relief for payment of prepetition taxes); *In re ICON Aircraft, Inc.*, Case No. 24-10703 (CTG) (Bankr. D. Del. Apr. 5, 2024) [Docket No. 48] (same); *In re Starry Grp. Holdings, Inc.*, Case No. 23-10219 (KBO) (Bankr. D. Del. Mar. 20, 2023) [Docket No. 166] (granting interim and final relief for payment of certain taxes and fees). Accordingly, the Debtors submit that the present circumstances warrant this relief in the Chapter 11 Cases.

SATISFACTION AND WAIVER OF BANKRUPTCY RULES

28. Certain isolated aspects of the relief requested herein may, if granted, be subject to Bankruptcy Rule 6003. Pursuant to Bankruptcy Rule 6003, a court may grant such relief if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein and in the First Day Declaration demonstrate the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

29. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code section 363(b), the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate and preserve the value of their estates. The Debtors thus submit that the requested waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

RESERVATION OF RIGHTS

30. Nothing contained herein is intended or should be construed as (a) an admission as to the validity of any claim or lien against the Debtors or their estates; (b) a waiver of the Debtors' rights to dispute any claim or lien; (c) a request to assume or reject any agreement, contract, or lease pursuant to Bankruptcy Code section 365; (d) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise; or (e) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Taxing Authority.

NOTICE

31. Notice of this Motion will be given to: (a) the United States Trustee for the District of Delaware; (b) the holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to the Prepetition Agents; (d) counsel to the Sponsoring Noteholders and proposed DIP Lenders; (e) counsel to the proposed DIP Agent; (f) the Internal Revenue Service; (g) the United States Securities and Exchange Commission; (h) the Office of the United States Attorney for the District of Delaware; (i) the Taxing Authorities; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

32. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms of the proposed orders attached hereto as Exhibit A and Exhibit B, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: May 7, 2024
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

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*Proposed Counsel to the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PROSOMNUS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

Re: Docket No. __

INTERIM ORDER AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an interim order (this “**Interim Order**”), under Bankruptcy Code sections 105(a), 363(b), 506(a), 507(a)(8), and 541 and Bankruptcy Rule 6003, authorizing the Debtors, in their discretion, to pay any prepetition Taxes and Fees owing to the Taxing Authorities; the Court having reviewed the Motion and the First Day Declaration; and this Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b), and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and this Court having found that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and this Court having reviewed the Motion and having heard statements in support of the Motion at a

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: ProSomnus, Inc. (8216), ProSomnus Holdings, Inc. (3855), and ProSomnus Sleep Technologies, Inc. (0766). The location of the Debtors’ principal place of business and the Debtors’ mailing address is 5675 Gibraltar Dr., Pleasanton, California 94588.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or First Day Declaration, as applicable.

hearing held before this Court (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. All objections to the entry of this Interim Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are hereby authorized to pay, in the ordinary course of their businesses either directly or indirectly through Avalara, all Taxes and Fees, including those relating to the period prior to the Petition Date or subsequently determined to be owed for periods prior to the Petition Date; provided, however, that payments on account of prepetition Taxes and Fees shall not exceed \$3,500.
4. The Debtors’ banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors’ bank accounts to pay all prepetition Taxes and Fees owed to the Taxing Authorities, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.
5. The Debtors’ banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Interim Order, and any such bank or

financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Interim Order.

6. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Interim Order shall create any rights in favor of, or enhance the status of any claim held by, any Taxing Authority.

7. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

8. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

9. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Interim Order shall be effective and enforceable immediately upon entry hereof.

10. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be deemed or construed as: (i) an admission as to the validity of any claim or lien against the Debtors or their estates, (ii) a waiver of the Debtors' rights to dispute any claim or lien, (iii) an approval or assumption of any agreement, contract, or lease pursuant to Bankruptcy Code section 365, (iv) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise, or (v) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Taxing Authority.

11. The final hearing (the "**Final Hearing**") to consider the entry of a final order granting the relief requested in the Motion shall be held on _____, **2024, at**
__ : __ .m. Prevailing Eastern Time.

12. Any objection to the entry of a final order granting the relief requested in the Motion shall be filed with the Court and served on the following parties **no later than 4:00 p.m.**

Prevailing Eastern Time on _____, (a) the Debtors, c/o ProSomnus, Inc., 5675 Gibraltar Dr., Pleasanton, California 94588; (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com) and Katherine M. Devanney (kdevanney@polsinelli.com); (c) counsel to the Sponsoring Noteholders and proposed DIP Lenders, Kilpatrick Townsend & Stockton LLP, 1114 Avenue of the Americas, New York, New York 10036, Attn: David M. Posner (dposner@ktslaw.com) and Gianfranco Finizio (gfinizio@ktslaw.com) and Morris James LLP, 500 Delaware Avenue, Suite 1500, Wilmington, Delaware 19801, Attn: Eric J. Monzo (emonzo@morrisjames.com) and Brya M. Keilson (bkeilson@morrisjames.com); (d) counsel to the Prepetition Agents, Alston & Bird LLP, 1120 South Tryon Street, Suite 300, Charlotte, North Carolina 28203-6818, Attn: Adam Smith (adam.smith@alston.com) and Lauren McHale (lauren.mchale@alston.com); (e) counsel to the proposed DIP Agent, Seward & Kissel LLP, One Battery Park Plaza, New York, NY 10004, Attn: Gregg Bateman (bateman@sewkis.com) and (f) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jon Lipshie (jon.lipshie@usdoj.gov).

13. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Interim Order.

EXHIBIT B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

PROSOMNUS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10972 (JTD)

(Joint Administration Requested)

Re: Docket Nos. __

FINAL ORDER AUTHORIZING PAYMENT OF PREPETITION TAXES AND FEES

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), for entry of a final order (this “**Final Order**”), under Bankruptcy Code sections 105(a), 363(b), 506(a), 507(a)(8), and 541 and Bankruptcy Rule 6003, authorizing the Debtors, in their discretion, to pay any prepetition Taxes and Fees owing to the Taxing Authorities; the Court having reviewed the Motion and the First Day Declaration; and this Court having found that it has jurisdiction to consider the Motion pursuant to 28 U.S.C. § 1334; and this Court having found that the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b), and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and this Court having found that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and this Court having reviewed the Motion and having heard statements in support of the Motion at a hearing held before

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: ProSomnus, Inc. (8216), ProSomnus Holdings, Inc. (3855), and ProSomnus Sleep Technologies, Inc. (0766). The location of the Debtors’ principal place of business and the Debtors’ mailing address is 5675 Gibraltar Dr., Pleasanton, California 94588.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or First Day Declaration, as applicable.

this Court (the “**Hearing**”); and this Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and any objections to the relief requested in the Motion having been withdrawn or overruled on the merits; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis, as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are hereby authorized to pay, in the ordinary course of their businesses either directly or indirectly through Avalara, all Taxes and Fees, including those relating to the period prior to the Petition Date or subsequently determined to be owed for periods prior to the Petition Date.
4. The Debtors’ banks and financial institutions shall be, and are hereby authorized, when requested by the Debtors, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors’ bank accounts to pay all prepetition Taxes and Fees owed to the Taxing Authorities, whether those checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.
5. The Debtors’ banks and financial institutions may rely on the representations of the Debtors with respect to whether any check or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order, and any such bank or financial institution shall not have any liability to any party for relying on such representations by the Debtors as provided for in this Final Order.

6. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any Taxing Authority.

7. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

8. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

9. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed as: (i) an admission as to the validity of any claim or lien against the Debtors or their estates, (ii) a waiver of the Debtors' rights to dispute any claim or lien, (iii) an approval or assumption of any agreement, contract, or lease pursuant to Bankruptcy Code section 365, (iv) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise, or (v) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Taxing Authority.

10. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Final Order.

EXHIBIT C

Taxing Authorities List

Taxing Authority Name	Address	Type of Tax
California Franchise Tax Board	P.O. Box 942857 Sacramento, CA 9427-0531	Franchise Tax (State)
California Department of Tax and Fee Administration	3321 Power Inn Road, Suite 210 Sacramento, CA 95826-3889	Sales and Use Tax (State)
Alameda County, California	Henry C. Levy, Treasurer – Tax Collector 121 Oak St., Room 131 Oakland, CA 94612	Business Property Tax & Unsecured Property Tax (Local)
Delaware	Division of Corporations PO Box 898 Dover, DE 19903	Franchise Tax (State)
New Jersey	New Jersey Division of Revenue and Enterprise Services PO Box 191 EFT Trenton, NJ 08646-0191	Franchise Tax (State)
Texas Comptroller	210 North 1950 West Salt Lake City, UT 84134-0180	Franchise Tax & Sales Tax (State)
Utah State Tax Commission	210 North 1950 West Salt Lake City, UT 84134-0180	Franchise Tax (State)
Washington Department of Revenue	PO Box 9064 Olympia, WA 98507-9034	Franchise Tax (State)
Food and Drug Administration	10903 New Hampshire Ave Silver Spring, MD 20993-0002	User Fees